

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2018 MAR 12 PM 2:34

CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY Gj

LOVELADY-JONES INCORPORATED,
Plaintiff,

-vs-

Case No. A-17-CA-1096-SS

WELLS FARGO BANK, NATIONAL
ASSOCIATION,
Defendant.

ORDER

BE IT REMEMBERED on the 2nd day of March 2018, the Court held a hearing in the above-styled cause and the parties appeared through counsel. Before the Court is Defendant Wells Fargo Bank, National Associations (Wells Fargo)'s Motion to Dismiss [#8], Plaintiff Lovelady-Jones Incorporated's Response [#11] in opposition, and Wells Fargo's Supplement [#18] in support.¹ Having reviewed the documents, the arguments of counsel, the relevant law, and the file as a whole, the Court now enters the following.

Plaintiff filed this suit in state court to prevent Wells Fargo from foreclosing on a property located at 900 Nelson Ranch Road in Cedar Park, Texas (the Property). Plaintiff asserts Wells Fargo is liable for breach of contract, negligent misrepresentation, fraud, and violation of the Texas Deceptive Trade Practices Act. Plaintiff also seeks declaratory relief to quiet title. Well Fargo removed to this Court and now moves for dismissal.

¹ Plaintiff also filed a second motion for an extension of time to respond to Wells Fargo's motion to dismiss. See Mot. Second Extension [#13]. Plaintiff filed this motion because it was late in filing its response even though the Court had granted it an extension. Although the Court is not normally in the habit of excusing late responses, the Court GRANTS Plaintiff's motion for a second extension to allow a full record to be created in this case.

Plaintiff is a debtor in a bankruptcy case pending in the Western District of Texas, Austin Division. *See In re Lovelady-Jones, Inc. d/b/a Serendipity Learning Center*, No. 17-10647-HCM. On August 7, 2017, the bankruptcy court entered an order allowing Wells Fargo to exercise its rights and remedies under the loan documents and foreclose on the Property. Suppl. [#18-2] Ex. B (Aug. 7, 2017 Bankruptcy Order). Wells Fargo claims this Court should dismiss the instant suit because Plaintiff does not have standing as the Property and any claims against Wells Fargo are property of the bankruptcy estate.

The Court agrees. The Property and any claims against Wells Fargo regarding the Property are part of the bankruptcy estate, not Plaintiff's property. *See* Aug. 7, 2017 Bankruptcy Order. Therefore, Plaintiff has no standing to bring such claims against Wells Fargo and his claims must be dismissed. If any further litigation regarding Wells Fargo's right to foreclose on the Property is commenced, a motion for attorneys' fees and sanctions would be welcome.

Accordingly,

IT IS ORDERED that Plaintiff Lovelady-Jones Incorporated's Second Motion for Extension of Time [#13] is GRANTED; and

IT IS FINALLY ORDERED that Defendant Wells Fargo Bank, National Associations's Motion to Dismiss [#8] is GRANTED.

SIGNED this the 11th day of March 2018.



SAM SPARKS
UNITED STATES DISTRICT JUDGE